

# Update on Section 117 Reporting Requirements

June 12, 2020

## **Moderator:**

**Robert Hardy**, Director of Research  
Security and Intellectual Property, COGR

## **Panelists:**

**Hilary Malawer**, Deputy General Counsel,  
Department of Education

**Elizabeth Peloso**, Associate Vice Provost  
and Associate Vice President for Research  
Services, University of Pennsylvania

# Timeline on Section 117 Reporting

- Section 117 enacted in 1986
- Department of Education (ED) 1995 and 2004 Dear Colleague Letters
- Correspondence between ACE and ED beginning in January, 2019
- Senate Report and Hearing February, 2019
- ED launches compliance investigations June/July 2019
- ED Information Collection Request (ICR) notice posted 9/6/19
- COGR comment letter submitted 11/4; community letter 11/5
- ED requests emergency review by OMB of revised ICR 12/17
- COGR and other associations object to timing (12/18-19)
- ED publishes revised ICR 2/10/20
- Associations submit comments 3/11
- OMB approves revised ICR 4/13

# September 6 Proposed Information Collection

- Required “true copies” of contracts or gift agreements to be uploaded to ED
- Expanded definition of “institution”
- Required individual donor information
- Required disclosure of foreign student tuition payments
- Required detailed information on foreign sources
- Required verification of gift influence on programs or curricula
- Required certifications of compliance with various trade laws

# The 12/17 Emergency Request

- Narrowed requirements for detailed identification of foreign sources
- Narrowed requirement for description of legal entities that benefit the institution
- Committed to non-public disclosure of individual donor information
- Clarified that tuition payments need be reported only when payment by a foreign source meets \$250k threshold
- Removed unauthorized certifications
- Removed questions about influence on program or curricula

## 2/10/20 ICR Revision

- Removed “true copies” submission requirement which is to be the subject of a separate rulemaking
- Association comments object to individual donor disclosure info and expansion of “institution” definition to include intermediaries
- Subsequently approved by OMB with no changes

# Section 117 Reporting

Presentation by the U.S.  
Department of  
Education

# Background

- September 6, 2019
  - Information Collection Request published in the Federal Register for 60-day comment period
  - The Department received 41 comments
  - The Department posted a response to comments on regulations.gov
- February 10, 2020
  - Information Collection Request published in the Federal Register for 30-day comment period
  - The Department received 17 comments
  - The Department posted a response to comments on regulations.gov
- See the Department's section 117 website at <https://www2.ed.gov/policy/highered/leg/foreign-gifts.html>

# General Reporting Obligation under 117(a)

- “Whenever any institution is owned or controlled by a foreign source or receives a gift from or enters into a contract with a foreign source, the value of which is \$250,000 or more, considered alone or in combination with all other gifts from or contracts with that foreign source within a calendar year, the institution shall file a disclosure report with the Secretary on January 31 or July 31, whichever is sooner.” (Section 117(a))
  - Not every foreign gift or contract must be reported
  - Only gifts or contracts that reach an aggregate value of at least \$250,000 from a particular foreign source must be reported
  - Key terms are defined in the statute and provided for reference within the disclosure form



# The Disclosure Form – Section 1

- Section 1 is where an institution identifies itself
  - Must list all of its campuses
  - Must report whether the institution is owned or substantially controlled by a foreign source and, if it is, identify:
    - The foreign source
    - The date on which the foreign source assumed ownership or control
    - Any changes in program structure resulting from the change in ownership or control

# Disclosure Form – Section 2

- Covers gifts from a foreign source, provided the gift meets the \$250,000 threshold when considered alone or in combination with all other gifts from or contracts with a particular foreign source
- Must report
  - The name of the foreign source
  - The type of foreign source
    - Foreign government, foreign legal entity, individual who is not a U.S. citizen or national or, an agent of a foreign source
  - Foreign source address
  - Gift terms (amount and date received)
  - Recipient, including any and all intermediaries

## Name and Address

- An institution is required to report the names and addresses of anonymous donors to the extent that the institution has or could reasonably obtain the donor's identity
- The Department will withhold a party's name and address (excepting country) from becoming part of the public disclosure report
- Institutions must make a reasonable effort to obtain a donor's identity
  - The reasonableness standard is well established by law

# Intermediaries

- An intermediary is an entity other than an institution that receives a gift originating from or enters into a contract with a foreign source
- Where a legal entity (e.g., a foundation) operates substantially for the benefit or under the auspices of an institution, there is a rebuttable presumption that when that legal entity receives money or enters into a contract with a foreign source, it is for the benefit of the institution, and, thus, must be disclosed
- Institutions must conduct reasonable due diligence when they receive the benefit of a contract or gift from any entity to determine whether the gift or contract is from or with a foreign source
- Institutions are required to report any gift to or contract between a foreign source and an entity if the institution did not receive a benefit from the gift or contract
- Institutions are not required to report any gift to or contract between a foreign source and an entity if the institution did not receive a benefit from the gift or contract.

# Disclosure Form – Section 3

- Covers contracts with a foreign source
- Must report
  - Name of foreign source
  - Type of foreign source
  - Foreign source address
  - Domestic party (the institution or an intermediary)
  - Contract terms (amount, start and end date)

# Scope of Reportable Contracts

- Institutions need not report a contract involving the transfer of funds from an institution to a foreign source
  - This interpretation is supported by legislative history
  - Example: Purchasing equipment from a foreign source
  - Each transaction should be evaluated independently
- Generally reportable contracts
  - Intellectual property license fees from a foreign licensee
  - Data or materials institutions sell to, lease to, or barter with a foreign source
  - Tuition for a student or students paid by a foreign source, provided the total amount of the tuition meets the \$250,000 threshold (alone or aggregated with other gifts and contracts from that foreign source)
- Contracts for an indefinite amount of money
  - Given the valuation challenges presented by certain contracts (e.g., indefinite delivery/indefinite quantity contracts), institutions may want to consider simply reporting contracts whose values could meet or exceed the statutory threshold to avoid potential non-compliance problems

# Disclosure Form – Section 4

- Covers restricted or conditional gifts Institutions must report
  - Name of the foreign source
  - Type of foreign source
  - Foreign source address
  - Restricted or conditional gift terms
  - The type of restriction or condition, which may include
    - Employment, assignment, or termination of faculty; establishment of departments, centers, research or lecture programs, or new faculty positions; selection or admission of students; award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion

# Disclosure Form – Section 5

- Covers restricted or conditional contracts
- Must report
  - Name of foreign source
  - Type of foreign source
  - Foreign source address
  - Domestic party
  - Restricted or conditional contract terms
  - The type of restricted or conditional contract
    - Employment, assignment, or termination of faculty; establishment of departments, centers, research or lecture programs, or new faculty positions; selection or admission of students; award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion



# Disclosure Form – Section 6

- Acknowledgement that inaccurate reporting may be subject to penalty under 18 U.S.C. 1001
  - Penalties are for knowingly and willfully falsifying a section 117 report, including omitting a material fact
  - Penalties can consist of fines and imprisonment



# Foreign Gift & Contract Disclosure

## INSTITUTION INFORMATION

Enter Your Office of Postsecondary Education Identification (OPEID):

**Find My Institution**

Reset

*NOTE: If your OPEID does not populate below, click reset, verify your OPEID is correct, and try again.*

School Name:

School Address:

Location/Campus:

City:

State:

Zip Code:

I acknowledge the institution information listed above is correct and accurate.  
If it is not, I will notify the Department by sending an email to  
[FSAForeignGiftReporting@ed.gov](mailto:FSAForeignGiftReporting@ed.gov)

CANCEL



## Section 1 - Institution Information

1a) List all campuses:

1b) Is the Institution, or any part thereof, owned or substantially controlled by a foreign source? (Y/N)

  \*

I acknowledge that the information provided is accurate to the best of my knowledge.

Save & Finish Later

OMB Control Number 1801-0006

## Section 2 - Gifts from a Foreign Source

Do you need to report a gift from a foreign source?

Yes



Terminology	Definition
Gift	Any gift of money or property.
Foreign Source	A foreign government, including an agency of a foreign government; a legal entity created solely under the laws of a foreign state or states; an individual who is not a citizen or national of the United States; and an agent acting on behalf of a foreign source.

< Previous Section

2a) Name of the Foreign Source

Legal Name of Foreign Source:

\*

DBA/Trade Name:

2a-i) Is the gift from a foreign government, including but not limited to any agency of a foreign government? (Y/N)



\*

2a-ii) Is the gift from a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states? (Y/N)

 ▼ \*

2a-iii) Is the gift from an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof? (Y/N)

 ▼ \*

2a-iv) Is the gift from a person, including a subsidiary or affiliate of a foreign legal entity, who acts as an agent of a foreign government, a legal entity created solely under the laws of a foreign state or states, or an individual who is not a citizen or national of the United States or a trust territory or protectorate thereof? (Y/N)

 ▼ \*

2b) Foreign source address including country of origin.

Country:

 ▼ \*

Address Line 1:

Address Line 2:

Zip/Mail Code/Postal Code:

2b-i) For gifts received from a foreign source other than a foreign government, the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business for a foreign source which is a legal entity.

2b-i) For gifts received from a foreign source other than a foreign government, the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business for a foreign source which is a legal entity.

Country Name:

 ▼ \*

## 2c) Gift Terms

2c-i) Gift Amount

 \*

2c-ii) Date Received

  \*

2d) Recipient, including any and all intermediaries:

 \*

I acknowledge that the information provided in Section 2 is accurate to the best of my knowledge.

&lt;&lt; PREV

SAVE &amp; FINISH LATER

## Section 3 - Contracts with a Foreign Source

Do you need to report a contract with a foreign source? No

I acknowledge that I have no transactions to report for section 3



Terminology	Definitions
Contract	Any agreement for the acquisition by purchase, lease, or barter of property or services for the direct benefit or use of either of the parties.
Foreign Source	A foreign government, including an agency of a foreign government; a legal entity created solely under the laws of a foreign state or states; an individual who is not a citizen or national of the United States; and an agent acting on behalf of a foreign source.

< Previous Section

Go to Next Section

## Section 4 - Restricted or Conditional Gifts From a Foreign Source

Do you need to report a restricted gift from a foreign source? Yes

Terminology	Definitions
Restricted or Conditional Gift	Any endowment, gift, grant, contract, award, present, or property of any kind that includes provisions regarding the employment, assignment, or termination of faculty; the establishment of departments, centers, research or lecture programs, or new faculty positions; the selection or admission of students; or the award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion.
Foreign Source	A foreign government, including an agency of a foreign government; a legal entity created solely under the laws of a foreign state or states; an individual who is not a citizen or national of the United States; and an agent acting on behalf of a foreign source.

[< Previous Section](#)

4a) Name of the Foreign Source

Legal Name:

\*

DBA/Trade Name:

4a-i) Is the gift from a foreign government, including but not limited to any agency of a foreign government? (Y/N)

  \*



4a-ii) Is the gift from a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states? (Y/N)

  \*

4a-iii) Is the gift from an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof? (Y/N)

  \*

4a-iv) Is the gift from a person, including a subsidiary or affiliate of a foreign legal entity, who acts as an agent of a foreign government, a legal entity created solely under the laws of a foreign state or states, or an individual who is not a citizen or national of the United States or a trust territory or protectorate thereof? (Y/N)

  \*

4b) Foreign source address including country of origin.

Country Name:	<input type="text"/> <input type="button" value="v"/> *
Address Line 1:	<input type="text"/>
Address Line 2:	<input type="text"/>
Zip/Mail Code/Postal Code:	<input type="text"/>

4b-i) For Gifts received from a foreign source other than a foreign government, the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business for a foreign source which is a legal entity.

Country Name:	<input type="text"/> <input type="button" value="v"/> *
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4c) Restricted or conditional gift terms

i) Amount

 \*

ii) Date Received:

  \*

iii) Detailed description of all conditions or restrictions

\*

#### 4d) Specific restricted or conditional gift provisions

4d-i) Do the restrictions or conditions concern or relate to the employment, assignment, or termination of faculty? (Y/N)

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4d-ii) Do the restrictions or conditions concern or relate to the establishment of departments, centers, research or lecture programs, or new faculty positions? (Y/N)

  \*

4d-iii) Do the restrictions or conditions concern or relate to the selection or admission of students? (Y/N)

  \*

4d-iv) Do the restrictions or conditions concern or relate to the award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion? (Y/N)

  \*


4e) Recipient, including any and all intermediaries


\*


I acknowledge that the information provided Section 4 is accurate to the best of my knowledge.

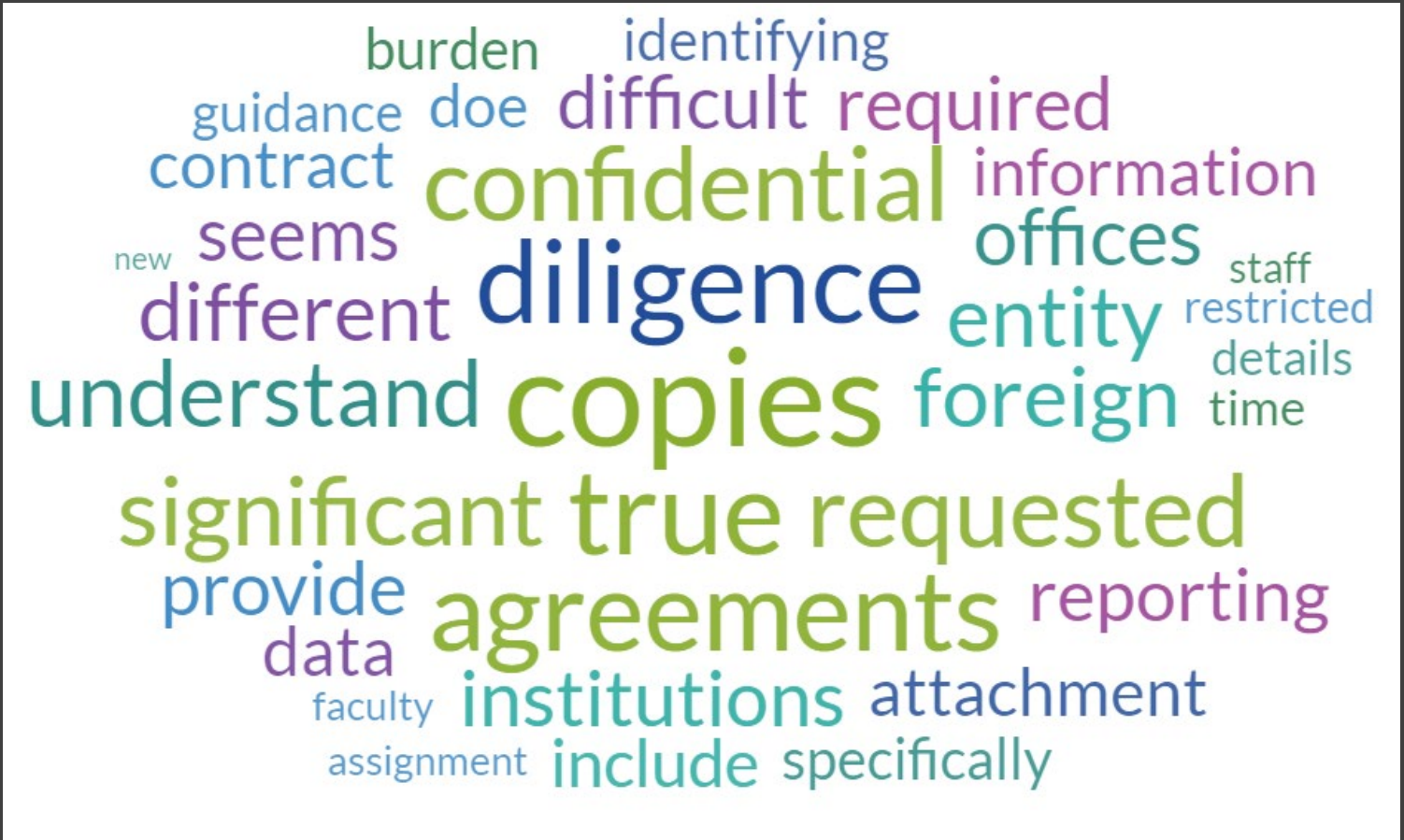
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Save & Finish Later

 113  
Participants

 81  
Thoughts

 1,425  
Ratings



# Uploading copies of agreements

- Who will be reviewing the documents and for what purposes?
- Existing agreements did not contemplate the sharing – limit requirement to new agreements after the effective date of the rule?
- Has the Department of Education considered alternatives such as adding audit to the Uniform Guidance single audit process?

# Questions about Reporting Companies

- Multinational corporations
- Foreign entities with U.S. parent
- Reporting location for foreign entities with offices in multiple nations
- Reporting requirements associated with change of ownership

# Additional concerns

- Scope of the requirements
- Valuation of in-kind exchanges

# Q & A

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**Next Session: 2 p.m. EDT**

**COGR Committee Reports & Preliminary Results of COVID-19 Impact Survey**

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Thank You



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